The Cases of the Broadway and Second Avenue

Judge Morris Dissenting.

THE CASE OF THE BROADWAY RAILROAD. Hon. Judges Edwards (Presiding Justice), Roose and Morris, on the bench.

-Milhau and Others, vs. Jucob Sharpe and

Aran. 2.—Milhau and Others, w. Jacob Sharpe and Others.—The Court was densely crowded by lawyers and Ingmen, who manifested the greatest anxiety to hear the decision of the bench in relation to the application for an injunction against the grantees of the proposed railmed in Broadway. Judge Strong was unable to attend, and Judge Roosevelt sat, to constitute the Court, though be took no part in the proceedings.

OPINION OF JUDGE EDWARDS.

The plaintiffs in this case allege that the street in the city of New York, known and designated as Broadway, is an ancient street, which was opened about one hundred and fifty years ago, by the then owners of the lands over and through which the street passes, for their own convinces, and was by them allowed to be used by citizens and travellers as a common public street or thoroughfare. They further allege that they are each of them owners in the of certain lots of great value situated upon the street, and that they believe they are owners in fee of all the lands in front of their lots to the centre of the street, subject only to the easement or right of way over the same; and they also allege that they are taxpayers to a large amount, by reason of their ownership of this and other property in the city. They then state that previous to the presenting of their complaint, the Boards of Aldermen and Assistant Aldermen of the city, in opposition to the veto of the Mayor, and in violation of the injunction of the highest local court, passed a resolution by which they authorized, and granted permission to, the defendants to lay a double track for a railway in Broadway, and Whitehall or State street, from the South ferry to Pitty night street, and thereafter to continue the same, from time to time, along the Bloomingdale road to Manhattanville. There were certain conditions attached to this grant, to which it its not now necessary to allude, and there are certain allegations contained in the complaint as to the city may are granted, which it will be necessary to consider hereafter. Aldermen and Commonalty of the city, have no right by virtue of their corporate powers, either as established by their charter, or conferred upon them by the Legislature, to authorize the railroad in question. They further insist that, owing to the peculiar situation of Broadway, both in reference to its width, and its use for general purposes as a street, the proposed railway track, if permitted to be used as the defendants intend to use it, will become a nuisance. They also contend that the right to use the street in the manner proposed can only be acquired by an express authority, delegated by the sovereign power of the State, by virtue of the right of eminent domain, and that it would be necessary, as a condition precedent to the exercise of such authority, to make compensation to the owners of the adjoining property. And finally, they contend that the grant to the defendants has been corruptly and illegrally made. Upon these grounds they pray for an injunction to prevent the grant from being carried into effect. I conceive that the question as to the general power of the Corpomation to authorize the laying of a railway track in the city has already been settled in the case of Drake vs. the Hudson River Railroad Company (7 Barb 528). As I have already understood that case, there were two questions distinctly passed upon, and decided by the Court. First, that a railway in a city is not perse a naisance or a purpressure; and, second, that the Corpomation of the city of New York has the power and right to authorize the use of its streets for that purpose. It was contended upon the argument that the case before us is distinguishable from that, because in that case the Legislature had, by its charter to the Railroad Company, authorized it to carry its road into the eity. But it will be observed that this authority is zade to depend entirely upon the assent of the Mayor. Aldermen, and commonably of the city. The corporate right, as an artificial existence for receive the benefit of the assent of permission of the seriest, and they contend that from this fact, the law the burden of proving the contrary rests upon the defendants. The defendants, on the other hand, have introduced an sflidavit of a dissinguished member of the har, who, it appears, has been employed by the Gerporation, and for some time past has been eagaged in preparing a digest of the accient resords, in reference to the title of the Corporation to the streets of the city. This affidavit is, to a considerable extent, argumentative, and consists of a statement of facts, with inferences and conclusions, but the fact of the considerable extent, argumentative, and consists of a statement of facts, with inferences and conclusions, but the self-fact of the contract of the co

samended. (Charmouth College was Woodward, 4 wasas.)

318.) It has the power to make law for its better government without are "makers. (# 260. Esp., 439) Lord Halt, in giving the judgment of the court, said, "The are of opinion that this privilege of making by laws and ordinance is received in the city," and were eligiant to wood woodward and the same and the comment of the court, said, "The are eligiant to be tree years and the court and the same and the corporation a power to make by laws, it can only make the care with the corporation a power to make by laws, it can only make for as it is expressed by the court, such power given by laws in any other case." —This are Molon Bay Company, 2.P. Williams, 201.) In the present case we the confers upon the Common Council of the city of New York, the power to make such laws as to them, or the greater part of them, shall seem to be good, sucful, which the confers upon the Common Council of the city of New York, the power to make such laws as to them, or the greater part of them, shall seem to be good, sucful, which the confers upon the Common Council of the city of New York, the power to make such laws as to them, or the greater part of them, shall seem to be good, sucful, which is the company of the council of the city of New York, the power to make such laws as to them, or the greater part of them, shall seem to be good, sucful, which is the council of the council of the city of New York, the power to make such laws as to them, or the greater part of them, shall seem to be good, sucful, which is a bound to administer in the same down to the council of the counci

with the follows fitteen stipulations, a which, for the purpose of the point now under consideration, it is unnecessary to notice. On the 6th of December, the resolution was also passed by the Board of Assistant Aldermen, and directed to be sent to the Mayor for his consideration. On the 18th of December, the Mayor returned the resolution with his objections to the Board Aldermen, where it originated. The effect of this veto of the Mayor was, that the Board of Aldermen could not proceed to reconsider the resolution before the 29th day of December, 1852. On the 27th day of December, Judge Campbell, of the Superior Court, upon an exparke application made to him by Thos. E. Davies and Courtland Palmer, granted an injunction against the Mayor, Aldermen and Commonalty of the city of New York, in which is the following clause:—

I do hereby command and strictly enjoin the defendants, the Mayor, Aldermen, and Commonalty of the city of New York, their counsellors, attornies, solicitors, and agents, and all others acting in aid or assistance of them, and each and every of them, that they and each of them do absolutely desist and refrain from granting to, or in any manner authorizing, Jacob Sharp and others, ithe person samed in the resolution, lor their associates, or any other person or persons who mover, the right, liberty, or privilege of laying a double or any track for a railroad in the street known as Broadway, in said city of New York, from the South forry to Fitty seventh street, or any railroad whatsoever in said street, preparatory to rior the purpose of laying or established, and the street known as forced the court, to be held at the City Hall, in the sity of New Or this court, to be held at the City Hall, in the sity of New Or the court, to be held at the City Hall, in the sity of New Or the court to be held at the City Hall, in the sity of New Or the court to be held at the City Hall, in the sity of New Or the court to be held at the City Hall, in the sity of New Or the court to be held at the City Hall, i

hereafter he adopted by means of cars and omnibuses, than five cents for seach passenger. It is stated in the complaint, and it is not denied, that six offers were made to the corporation by other parties than the defendants, and the complaint alleges that one of them, if accepted, would produce a sum exceeding \$250,000 per annum for the benefit of the corporation, and the reflect of the taxpaying citizens, while each passenger would be charged but he cent passenger would be charged but five cents fare. That another offer, if accepted, would produce the sum of \$100,000 per annum for the benefit of the corporation, while each passenger would be charged but five cents fare. That another offer, if accepted, would produce the sum of \$100,000 per annum for the benefit of the corporation, while each passenger would be charged but three cents fare. That another offer, if accepted, would produce the sum of \$1,000,000 for the benefit of the corporation, while each passenger would be charged but three cents, and, inally, that an offer was made, in which the grant was made to the defendants, with the exception, that instead of charging five cents for each passenger, they would charge but three. The defendants do not denote the sum of the corporation while each passenger would be charged but three cents, and, inally, that an offer was made, in which the grant was made to the defendants, with the exception, that instead of charging five cents for each passenger, they would charge but three. The defendants do not denote the sum of the sum

Broadway, in said city of New York, from the South ferry to Filty seventh street, or any railroad whatsoever in said Broadway, and from breaking or removing the pavements in Broadway, and from breaking or removing the pavements in the state of the court, to be held at the City Hall, in the city of New York, on the second Menday of January, 1853, at the opening of the court on that day, or as soon thereafter as counsel can be heard, why this injunction order should not be made permanent.

There are some considerations connected with this injunction necessary to be here stated. Ist. It not only prevents the Mayor, Aldermen and Commonalty giving the permission to the persons named in the resolution, upon the terms specified therein; and the stipulations attached, but absolutely prevents the Mayor, Aldermen and Commonalty from giving permission to any person or persons, upon any terms, to lay a rail track in Broadway. With this injunction upon them, (if it is legal,) they could not give the permission to the other gontlemen mentioned in these proceedings, who offer such favorable terms to the tax payers and citizens. Again, the order to show cause was returnable the second Monday of January. 1853—which was the 6th day of January—being several days after the expiration of the term of office of the then Mayor and Common Council, and within which they could act on the subject. The consequence of this injunction, (if legal.) would be to postpone the consideration of the resolution until those who could act upon it, if they desired to do so, were out of office, and when the parties appeared to show cause, although the court might decide that the corporation had a perfect right, and that it was their duty, to pass the resolutions, till the court would have no more power to restore the resolution, or to repair the injuny caused by the act of their associate, than they have to resustiate the dead. On the 28th of December the injunction was sterved upon the Mayor and some of the city and county of New York, their equity pow

I shall treat the resolution as an ordinance, or by-law, and its reconsideration and adoption as, properly, acts of legislation in the fullest sense in which the term legislation can be justly applied to the acts of a corporate body.

Again —

Every Alderman who voted for the resolution, with the intent that it should take effect as a corporate act, had given his ascent. Every one of them, therefore, who has thus as ented—the conclusion is plain and irresistible—has done the very act that the order of the court commanded him not to do, and by se doing has violated its mandate and contouned its authority.

Again add that, even upon the supposition that they were

bound by the previsions of their charter to reconsider the receivation, they were equally bound by the mandate of this court to receive and reject it when recensidered, if the erder of the court was in truth issued in the exercise of its proper jurisdiction.

These extracts show that the Superior Court claims the jurisdiction to control, by injunction, the legislative action of the Common Council, and to compel all its members, while in their legislative capacity, and acting upon a legislative matter, to vote according to the directions of a single judge, and against their own deliberate opinion; and that, should the members of the Common Council in such matter vote in opposition to the dictation of the judge, such act would be illegal and criminal, and consequently void. The Judge, in his opinion, also states—

The injunction commanded the corporation and its members to desist absolutely from the performance of certain specific acts, and, if this command out of under no circumstances be rightfully addressed by a count of equity to a municipal corporation, the Common Council and its members, in the just maniferance of their own rights, were bound to diregard it.

The words which I have italicised present the course.

perific acts, and, if this semmand easile under no circumstances be rightfully addressed by a count of squity to a nunicipal corporation, the Common Council and its members, in the just sanistenance of their own rights, were bound to discrept the just sanistenance of their own rights, were bound to discrept the just sanistenance of their own rights, were bound to discrept the pure the pure proper jurisdiction, which this Court has under consideration, which the exercise of proper jurisdiction. If it was not is sued 'in the exercise of proper jurisdiction,' then, in the language of Judge Duer, 'the Common Council and its members, in the just maintenance of their own rights, were bound to disregard it,' and their voting in the affirmative was not ''an illegal and criminal act, which could confer no right.' This leads to two questions—First, what kind of a corporation is that of the city of New York? Second, what are its powers? The Mayor, Aldermen and Commonality of the city of New York, are a municipal corporation, created for governmental purposes, possessing, however, incidental thereto, in many respects, the character of a private corporation. This corporation has two separate and distinct series of corporate powers, right, duties and responsibilities. The one, that of a government, of which I will speak hereafter, the other, that of a private corporation, which I will now consider, because it is necessary for the purpose of intelligibly defining the line between its property, liabilities, duties, and city Charter, page 14, section 2.) grants, ratifies, and confirms to the Mayor, Aldermen, and Commonality of the city of New York

The City Hall or State House, with the ground thereto belonging, two marks houses, the bridge into the dock, the new burial place, and the aforementioned ferry, with these and severy of their rights, members, and any singular the rents, issues, profits, gains and advantages which shall or may are grew or acreave by the said City Hall and State House, before the profits, and on a sing

would have bad the right, and it would have been its duty, to defend it. But to remove all quastion upon this point, we have the affidavits of the parises themselves, who are men of high respectability, and of abundant secuniary responsibility, and they positively swear that their offers were made in good faith, and for the purposes therein expressed. And in one case it appears that their offers were made in good faith, and for the purposes therein expressed. In die offers were made in good faith, and for the faithful parformance of their agreement. Surely this is enough to counterail any number of allegations founded on mere suspicion. In deciding as to the comparative merits of the offer which was accepted, and the offers which was rejected, the question is not, as the defendants seem to suppose, as to what amount of burthens have been assumed by the grantees. But even if it were, it seems, from their own showing, that they have received, or will receive, a full equivalent in value for the burthens which they have thus disinterestedly assumed. The true question is, what amount of buseful night have accrued to the sity in case that the most advantageous offers made had been accepted? And it this point of view there can be no other conclusion than that the Corporation has shown as entire disregard of the public interest, and of its ewn duties. It it had see the public interest, and of its ewn duties. It it had see the public interest, and of its ewn duties. It it had see the public interest, and of its ewn duties. It it had see the public interest, and of its ewn duties. It it had see the public interest, and of its ewn duties. It it had see the public interest, and of its ewn duties. It it had see the public interest, and the february of the poor of the city and the right to the public interest, and the february in the content of the poor of the city and the right to the public the content of the public the

associates, who heard the argument, was not able to be present, but had requested him to state that he concurred with the decision just now delivered. He (Judge Strong)

to writing.
SUBSTANCE OF THE DISSENTING OPINION OF JUDGE

and disposition of the same, in any way that would be lawful for an individual owner; and any contracts or engagements entered into in the course of such management and disposition, would be as obligatory upon them as upon an individual."

In the case of Bailey against The Mayor, Aldermen, and Commonalty of the city of New York, the Supreme Court of this State held—

That the grant of the Legislature, authorizing the city to furnish the city with water by means of the Croton squeduct, was the grant of a private franchise, made as well for the private emolument and advantage of the city, as for the public good; and that the defendants, quond hoc, were to be regarded as a private company, and to be dealt with accordingly.

In the Berrian Island case, tried in this court, in which Justice Edwards delivered the opinion of the court, austaining the injunction against the corporation, and in the Washington Market case, in which the opinion was delivered by Mr. Justice Roosevelt, sustaining the injunction to the company, and were dealt with accordingly, because in both cases the subject matter of the controversy was the private property of the corporation. The Mayor, Aldermen, and Commonality of the city of New York possess another and very different and mere important power—a governmental power. This power is conferred by the charter, and also by various statutes. Their consrol over the streets and highways, their right to do anything in relation to the streets, or to order it to be cone, or granting permission to others in relation to streets, is embraced in this governmental power. This political governmental power, is limited, and subject to the control of the legislative power of the State; but to the extent of the power delegated te them in their exercise of it, and the immense discretion that is conferred with it, they are as exampl from judicial interference, dictation, and control, as is the State government. Itself; and for the same political reasons, to keep separate and distinct the three departments of go to writing.

SUBSTANCE OF THE DISSENTING OPINION OF JUDGE MORRIS.

I agree with my brethren up to a certain point. We all agree that the Common Council have authority to authorize the laying of railways in the streets of the city; that a previous act of the Legislature fer that purpose is not necessary; that a railway is not in itself a muisance, and that there is no evidence that it would be a nuisance in this particular case. But we divide upon the point whether, in the exercise of this power, the corporation is using its private property or exercising a governmental trust. My brethren think, that in acting in this case, the corporation is disposing of its private property. I think that it is exercising a legislative and political power. And in assigning the reasons for my conclusions, I will first consider the second point presented by the plaintiffs. That point is this, that—

Making the grant in defiance of the injunction out of the Superior Court, was an illegal and criminal act, which could confer no legal right on the grantees.

I consider this pount, first, not only for the reason that the decision of it in favor of the plaintiffs will determine this cause, and require that the injunction should be made permanent, but also because a correct decisien upon this point is of more importance to the well-being of 'this city, and to our citizens, collectively and individually, than would be the benefit or injury to them of any railway in Broadway, or in any other street of the city. In this connection, I present a series of facts admitted by the parties to this suit, viz.—On the legislature of the city of New York, passed the following resolution, viz.—

Resolved, That Jacob Sharp, Freeman Campbell, (and twenty-eight others who are named in the resolution,) and those who for the time being may be associated with them, all of whom are herein designated as associated of the Broadway railway, have the authority and consent of the Common Council to lay a double track for a railway in Broadway and whitch all of St the legislative body not to vote upon a question, or to to to to ten accordance with its dictation, by imprisoning those members who refuse, this dictatorial power becomes the government, and if the citizen does not feel oppression, it is only because there is no immediate reasons for its exercise. By the charter of the city, and by statutes of our fitted legislature, extensive and important governmental part of the city of the city of the Vork. In their capacity as a municipal corporation. In relation to the exercise of these powers to the extent delegated, they are subject only to the Legislature action of the State, altering, modifying, or revoking them, and to the judicial tribunals of the State, acting only in the same manner that the judiciary cannot legally issue an injunction to prevent members voting for he law, or to compel them to vote against it. After the bill has received all the forms to make it alway and is attempted to be under the proper asset, stay its application, upon the ground of its unconstitutional to beyond the power delegated to them by the charter or the laws of the State, the judiciary cannot interfere with the action of the members by injunction. But after an ordinance has received all the same than the courts, either by injunction or by other proceedings, as may be required in the particular case, may declare the ordinance to be void by reason of the want of authority to enacti. If, however, the Legislature of the State have the constitutional power of the state have the constitutional power of the constitution of the want of authority to enacti. If, however, the Legislature of the State have the constitution of the want of authority of the constituti

class or body of powers having reference to their interest and safairs as a private company.

It is therefore clear that the Common Council were acting as a political body, upon a subject purely governmental, where their sum discretion was paramount, in the entroise of which up judicial power had the legal right to interfere, and any power except the Legislature of the State, and that alone by an act repealing the power conferred upon the Common Council, or repealing or altering the particular resolution or ordinance. My conclusion, therefore, is, that no count could legally interfere with the action of the members of the Common Council control of the count of count of count of the count of count of count of the count of count

THE SECOND AVENUE RAILROAD.

Before Hon. Judges Edwards, Roosevelt. and Morris. Gerard Stuyresunt vs. Denion Pearsall et al.—The com-plaint in this case states that the Mayor, Aldermen and Commonalty of the city of New York have granted to the defendants the permission to construct a railroad, commencing on the Second avenue and thence running through other avenues and streets of the said city. It further alleges that this grant was and is of great value; that it was obtained by the defendants without their paying anything therefor to this city; and that if the same had been effered for sale, or if the railroad had been made by the corporation, and maintained and used for the benefit of the city, it would, by the sale of the right to construct it, or by the income of the road, have produced large profits and returns to the corporation, to be expended and applied in the support and maintenance of the city government, and to the extent of many thousands of dollars. These allegations are not denied, and for the purposes of the present motion they must be assumed to be true. It is also an admitted fact that the plaintiffs are property holders and tax payers in the city to a large amount. Upon this state of facts, I am of opinion, for the reasons which have been stated in the case of Milhau vs. Sharp et al., that the corporation, in making the grant in question, has been guilty of such a breach of trust as calls for the interposition of this ceurt, and that an injunction should be issued against the defendants, in pursuance of the prayer of the complaint.

Judge Reosevelt concurred. Judge Morris dissented.

Theatrical and Musical.

Bowers Theatre.—Mr. C. Burke, the celebrated American comedian, appears, for the first time in four years, this evening, in two of his great characters, viz.—Solon Shingle in the "People's Lawyer," and Dickory in the "Spectre Bridegroom." He will be supported by the leading artists attached to this prosperous theatre. Miss Hiffert will sing a favorite ballad. The amusements will close with the drama called the "Murder at the Hall."

BROADWAY THEATHE.—The historical tragedy by John Howard Payne, entitled "Brutus or the Fall of Tarquin," will commence the entertainments this evening, Mr. Forrest appearing in his great character of Lucius Junius Brutus, Conway as Titus, Barry as Collatinus, Madame Ponisi as Tullia, and Mrs. Abbott as Tarquina. Miss Price will dance a pas test, and the entertainments will conclude with "To Paris and Back for Five Pounds."

BURTON'S THEATHE.—The splendid piece called "Paris and London," which had such a long and very successful run, will be presented this evening, with a cast which embraces all the sterling talent of this favorite and prosperous establishment—Mr. Placide in his inimitable personation of the French barber, and Burton as Trot, the perous establishment—Mr. Placide in his inimitable per-sonation of the French barber, and Burton as Trot, the ceachman. Besides, the names of Dyott, Miss Weston, and other eminent artists will sustain prominent charac-ters. Mrs. Holman will sing a favorite ballad, and the favorite farce of "Poor Pillicoddy" concludes all.

Invorte farce of "Poor Pillicoddy" concludes all.

NATIONAL THEATRE.—The moral drama entitled "Crime and Repentance" will commence the amusements of this evening, Mr. W. G. Jones as Michael Recordon. Miss Deforest will sing a favorite ballad, and Miss Partington will appear in a popular dance. The Scottish drama entitled "Kenneth, or the Weird Woman of the Glen," will be the concluding feature. Nearly all the members of Purdy's dramatic company appear in this piece.

WALLACK'S TREATRE.—Two very attractive pieces are amounced for this evening by manager Wallack. The first is, "Faint Heart never Won Fair Lady," Lester and Miss Laura Keene being the stars of the piece. An excellent selection of new and popular music will be played by the orchestra, Miss Malvina will appear in a pos militaire, and Sheridair's fine comedy of the "Rivais," with Blake, Lester, Brougham, and Miss Laura Keene, in the leading characters, will terminate the amusements.

"American Museum.—The drama entitled "Six Degrees"

Blake, Lester, Brougham, and Miss Laura Keene, in the leading characters, will terminate the amusements.

American Museum.—The drama entitled "Six Degrees of Crime," with C. W. Clarke personating Julio Dormelly, and Miss Mestayer the part of Louise, is announced for to night, together with the farce of the "Phenomenon." Two excellent pieces are also provided for this afternoon.

St. Charles Theatre.—M. J. R. Scott is still drawing crowded houses to this theatre—he is announced to appear in his great character of Ugolino this evening, in the tragedy of that name. The new drama, styled "Eveleen Wilson," and the farce of the "Lottery Ticket," will also be given.

Chrus.—Sands & Company present a varied and attractive bill of entertainment for this evening, comprising, independent of the regular equestrian amusements, several novel features.

Christy's Opera House—Christy's Ethiopian Opera Company continue as attractive as ever. The new songs, entitled "Etty Way" and "Lilly Dale," are to be repeated, together with other attractive peformances.

Wood's Minsterials.—Manager Wood has provided an other new song for his patrons this evening, entitled "Woman's Rights." His entertainments give decided satisfaction to crowded houses every night. All the sceentric performers are to appear.

Er Valentine—This highly popular eccentric lecturer wall netgronized at House Charel. He will continue his

eccentric performers are to appear.

IR. VALENTIKE.—This highly popular eccentric lecturer is well patronized at Hope Chapel. He will continue his lectures during the ensuing week. The receipts of Welmeday, Thursday, Friday and Saturday, will be for the benefit of the New York Volunteers.

PROF. HELLER.—This celebrated necromancer is to commence another series of his soirces of diablerie, at 559 Broadway, to morrow evening. The programme is rich and varied.

Bloadway, to morrow cannot be provided by and varied.

Banvard's Panorama of the Holy Land.—This splendid panors may is drawing crowded houses every night at the Georama, Broadway.

Owens' Alfine Rameles, and Ascent of Mort Blanc. This novel and beautiful entertainment will be given to morrow evening by Mr. John Owens, who is well known to the citizens of New York. It will be illustrated by the patients of the control of the control of the citizens of New York.

beautifully p inted scenery.

Mrs. Catharine N. Sinclair made her first appearance before a crowded audience at the Varieties theatre, New Orleans, on the 23d ult. Orleans, on the 23d ult.

The St. Charles theatre, New Orleans, closed for the eason on the 25th ult., with the benefit of Mr. Lynne.

The Bateman children made their first appearance in Mobile on the 22d ult., and closed their engagement on the 28th ult. the 28th ult.

The Ronsset family, accompanied by John Sefton, were to perform in Charleston last week.

Miss Kimberly was greeted with an overflowing house at her benefit in Pittaburg on the 1st inst.

Mile. Melisse, one of the French dancers, had a fine audience for her benefit at the Howard Athensum, Bos-ton, on the 1st inst. Mr. W. R. Goodall was married in Boston on the 28th

The Mason Will Case.

Before the Surrogate.

APRIL 2.—Application was made by Mr. Ring, on behalf of Mr. James Mason, in pursuance of the recent verdict in the Circuit Court, for letters of administration on the estate of John Mason, deceased. The application was opposed, and the matter was not disposed of by the Surrogate, as it appears the case is to be taken to the Jourt of Appeals, on a motion for a new trial. Thus this long litigated case is destined to provide more heavy fees for lawyers, and a dry "thrice told tale" for judges and jurymen. News Later to Junges &

Naval Intelligence.
The U.S. sieamer Saranac arrived at Havana 28th ult., rom Pensacold, and remained there 20th.

JOHN GILPIN AND FLYING PISH.

On the 29th of Osteber and 1st of November, 1852, these two noble ships took their departure from New York, for the far off and distant port of San Francisco, in California.

To guide and direct them upon their course, each ships was supplied with a set of Maury's wind and current was supplied with a see of sailing directions, cossiples as they have been, from thousands of abstract journals in his possession, at the Observatory in Washington. Both ships made extraordinary passages, and we collect and compare their journals for the information of future, pilgrims over that waste of waters.

The John Gliph mad the start by two days, which Capt. Donne employed, as well as several succeeding ones, in running off to the eastward. The Flying Fish leaving port on the let of November, Capt. Nickels, after ebtaining a good oding, steered of to the south and east, in almost a direct lime to where she crossed the equator, upon the meridian of \$2.30. While one ship was to the eastward of Maury's track, the other was almost equally far to the westward, and we contend, that if they had followed his route more strictly, with the winds which it was their good fortune to have, they would have made the horsest extend distance to be sailed by the route for that month, from New York to the equator, is 3.018 miles. The distance run by the John Gliphi was 4,087 miles. It is not known from the abstrant of the Flying Fish how many miles she ran; but taking her lastitude, and longitudes, as well as those of the Gliphi the Flying Fish how many miles she ran; but taking her lastitude, and longitudes, as well as those of the Gliphi the Flying Fish, for the contrast of the Gliphi the Flying Fish, for the contrast of the Gliphi the Flying Fish, for the contrast of the Gliphi the Flying Fish, for the contrast of the Gliphi the Flying Fish, for the contrast of the Gliphi the Flying Fish, for the contrast of the Gliphi the Flying Fish, for the contrast of the Gliphi the Flying Fish, for the contrast of the Gliphi the Flying Fish, for the contrast of the Gliphi the Flying Fish, for the Gliphi the Flyi

THE RECENT PASSAGES OF THE CLIPPER SHIPS

Here fortune again favored the Glipin, and aeserted the Fish. The doldrums about the equator seemed to be fatal to the latter, for while she lay becalmed the Glipin passed her, and again got the lead, which she continued to held, and although the Fish, like the post boy, "came lumbering at her heels," the Glipin kept ahead, and entered the Golden Gate in fifteen days from the line—the shortest passage except one upon record. The Flying Fish had also a fine run up of eighteen days. Between 6 and 7 degrees north, for two days, she is logged, "calm throughout." in 11° she took the northeast trades; on the 31st of January, 1863, one day before the Glipin, she anchored in the harbor of San Francis so, after the unusually short voyage from, New York of ninety-two days and four hours.

Thus terminated the contest between these two noble ships. We have compared their abstracts, and followed them upon their voyages, with interested feelings. On a comparison, it is difficult to determine which vessel is entitled to the palm of victory, so nearly are they matched. Each experienced the vicissfudes of wind and weather to which they were liable upon such a lengthened voyage, and we may well put them down as being crack ships, well handled and ably commanded.

GOVERNOR LOWE'S SPEECH .- At the dinner of the Irish Social and Benevolent Society, held in Bal-timore on the 29th March, Governor Lowe honored the company by an eloquent address, which was enthusiastically applauded, in which he passed a high eulogium upon the virtues and amiable qualities of the "Sons of Erin," and animadverted severely upon the brutal policy of the English government towards the Sister Isle, to which might be attributed the slough of despond in which that unfortunate people were at the present time immersed. He concluded by calling upon his audience to remember that they by calling upon his audience to remember that they were not Saxons, Celts or Anglo-Saxons, but that every nation of Europe had contributed its blood to the formation of our great amalgamated race—the American people—and that we hold ourselves subordinate to no European nation, acknowledge no time honored exclusiveness of ancestry, and measure our present duties and our future destiny by no rules which are to be found in any British or other foreign standard of excellence.

Police Intelligence.

Samuel J Proper Committed to Prison for Trial—In the matter pending before Justice Stuart against Samuel J. Proper and John M. Martin, charged with obtaining \$400 and upwards from Benjamin F. Carmichael, of Rahway, New Jersey, by making false and fraudulent representations respecting a fictitious draft for \$800 on a pretended firm in New Orleanas, the magistrate, on Saturday afternoon, decided to hold Proper to ball in the sum of \$1,500 to answer the charge at the Court of Sessions, in default of which he was committed to prison. For Martin, the individual concerned with froper, the magistrate set the amount of ball at \$1,000 to answer the charge, and in default of ball he was likewise committed to prison. The magistrate has, in addition to the above case, committed Proper on an indictment found against him some time since, on a similar charge, his ball having surrendered him.

Brutal Treatment to a Boy.—Yesterday officer Smith, of the Nineteenth ward, arrested a journeyman carpenter named Homas o'Prisen, on a charge of perpetrating an aggravated assault upon the person of a boy only ten years of age, named Feter Farney, under the following circumstances. On Saturday afternoon it seems the boy went to the workshop where O'Brien is employed, in Trenty-fifth street, near Tenth arenne, and there enticed away a dog belonging to O'Brien. The boy had not got far off before O Brien pursued him and broughthim back to the skop. He then tied a rope around the boy's body, and the other end of the rope around the boy's body, and the other end of the rope to the crank, and thus tightened the rope around the boy's body, at the same time drawing him close to the crank, and there she had not prevents, No. 233 Tenth avenue, a physician was procured, who gave his opinion that the child would not recover the severe internal injuries. The two boys were committed as witnesses.

Furious Driving.—A hack driver named Wm. Fitspatrick man suppose of the Eighteenth ward arrested Fitzpatrick and when near Twenty-nint